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January 20, 2000

Scott L. Reichle, Esquire
Reichle and Reichle, P. C.
5627 George Washington Memorial Highway
Yorktown, VA 23692

Re: Grafton Materials, Inc. / Peninsula Hardwood Mulch, Inc.

Dear Mr. ~~Reichle~~ ^{Scott}:

Several months ago you and your client, Mr. Larry Wilson (President, Peninsula Hardwood Mulch) met with members of the County staff to discuss Mr. Wilson's interest in locating a mulch processing operation on the Grafton Materials property on Lakeside Drive. Subsequently, on August 3rd, Mr. Wilson met at the site with Messrs. Baldwin, Maddalena and Seaborn and myself to show us the location of the proposed operation and to accompany us to the site in James City County where the mechanical equipment is currently located. More recently, in your letter of October 4, 1999, you provided a drawing depicting the proposed operation and additional information concerning the origin of the Grafton Materials operation. These meetings and the supplementary documentation have provided the information needed to formulate a position concerning the question posed by Mr. Wilson. A summary of my understanding of the proposal and my position on the issue follows.

Pertinent Facts and Considerations

1. The subject site is 46 acres in size and is currently zoned RC-Resource Conservation. Based on information submitted by the current owner of the property (Mr. Clinton C. Gardner t/a Grafton Materials) and aerial photographs, it has been documented that the Grafton Materials borrow pit and sand/topsoil operations were in existence in the late 1940s/early 1950s, prior to the adoption of the first York County Zoning Ordinance in 1957. As such, the borrow pit and materials processing and sales (sand, soil) were considered legally existing nonconforming uses when that ordinance became effective. The soil excavation/sale operation included mechanical equipment to screen and blend topsoil to a consistent particle size and quality. In 1988, the old topsoil screening equipment was replaced and upgraded, but remained in the same basic location on the site. The borrow pit operation was discontinued about 1990 but the soil screening/sales operation has continued and is still in opera-

tion (continuing to exist as a nonconforming use). Essentially, the soil screening operation is a soil "recycling"/topsoil "manufacturing" process in which soils extracted from the site or delivered to the site have been screened to remove large particles and blended with additives such as leaf compost to produce a marketable finished product.

2. In 1991, the Board of Supervisors approved Resolution No. R91-286 which authorized the establishment of the Peninsula Hardwood Mulch operation on a 25-acre portion of the Grafton Materials property and which included the area being used for the topsoil processing/screening operation. The use permit was approved with the express understanding that the plant nursery/mulch sales activities to be conducted by Peninsula Hardwood Mulch would operate in conjunction with the topsoil screening/blending/sales operation being conducted as a nonconforming use.
3. Since its establishment on the site, Peninsula Hardwood Mulch has conducted an operation that includes the delivery of large quantities of mulch to the site by tractor-trailer. Smaller trucks then deliver the mulch to retail customers. The tractor trailer deliveries are made by Peninsula Hardwood Mulch's own trucks and originate from its processing facility in the Norge area of James City County. Mr. Wilson's current proposal is to move the processing facility to the Lakeside Drive site, thus eliminating the need to transport the "finished" mulch product between Norge and Lakeside Drive.
4. The mulch processing facility consists of a hopper/conveyor belt/hammer mill apparatus very similar to the existing trammel mill screen that is operated on the site to process soil. The raw material fed into the system consists of chunks of bark delivered to the processing site from the West Point paper mill. The bark is dumped from tractor trailers and then fed into a hopper by a front-end loader. It then passes via conveyor belt into a cylindrical barrel referred to by Mr. Wilson as a hammer mill. The hammer mill breaks or shreds the chunks of bark into the finished mulch product.
5. Having the processing operation located at the Peninsula Hardwood Mulch Grafton Drive site will eliminate the need to transport the material between Norge and Grafton (thus eliminating those truck deliveries to the site). However, the finished-product trips will be replaced by an approximately equal number of tractor trailers delivering the bark to be processed. Mr. Wilson's purpose in requesting consideration of this proposal is to enable his operations to be consolidated in one location and to avoid trucking the product between the sites.

Conclusions

1. Peninsula Hardwood Mulch has incorporated the nonconforming soil screening/processing operation into its operation, as was depicted on the plans submitted with the 1991 use permit application. Both uses are located on the same parcel of land. Soil screening/processing would not be considered a normal incidental and ac-

cessory use to a nursery/landscaping business. However, by virtue of its "grandfathered" status, the use has continued and has become an accepted and tolerated aspect of the total business operation being conducted on the site. The mulch processing/manufacturing operation is proposed to be conducted within the same area as was designated for topsoil processing by the 1991 use permit approval.

2. The "manufacturing" or processing of mulch is not, in my opinion, something that would be considered a customarily incidental accessory use to a plant nursery/landscaping business, whether wholesale or retail. There is no specific listing for such an activity in the Zoning Ordinance (or for soil screening) and, in my opinion, such a use would most logically be categorized as a "recycling plant" (reference Section 24.1-104 of the Zoning Ordinance). In fact, the soil screening/blending operation (the nonconforming use) is probably best categorized as a "recycling plant" as well, particularly since it involves the addition of recycled leaves and compost as a soil amendment. However, "recycling plants" are not an authorized use in the RC zoning district, either as a matter of right or by use permit.
3. Section 24.1-801(a)(2) of the Zoning Ordinance provides that a nonconforming use may be expanded if authorized by the Board of Supervisors through the issuance of a special use permit. Structural expansions of nonconforming uses are limited to a maximum increase of 50% of the building floor area at the time the use became nonconforming. The Ordinance does not specify a limitation on the size of expansions not readily measured by building floor area (as is the case here), thus leaving the issue open to determination by the Board as a condition of the use permit approval process. Given the categorization of both the soil screening and mulch making operations as forms of "recycling plants" (thus, the nonconforming use in this situation is a "recycling plant"), it is my opinion that a use permit application can be filed to ask that approval be given to expand the existing "recycling plant" (the soil screening operation) to include the mulch-making operation. Since the subject uses do not involve building floor area, the degree of permissible expansion, if any, will be a matter to be determined and set by the Board as part of the use permit review process.
4. This opinion is based exclusively on the similarities between these two operations in terms of the types of materials processed and the equipment used. It is my opinion that the addition of mulch processing would not constitute a change in the character of the existing recycling operation (i.e.- the soil processing/blending). Both operations involve organic materials with relatively small particle sizes; both involve delivery of the raw materials to the site by truck/tractor trailer; both involve stockpiling the raw material on the site while awaiting processing; both involve running the small particles of raw material (whether soil or bark) through a cylindrical "mill" that breaks them into smaller/finer particles; both involve storage of the final product on the site while awaiting retail sale; and, both involve materials used in landscaping. This determination of similar character would not, however, extend to include grinding of stumps, logs or tree trimmings since all of those materials are much larger and bulkier and the process of breaking them into smaller particle sizes would

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require the use of much different types of equipment (i.e. -- larger, more intensive, noisier, etc.). Likewise, this interpretation of similarity in character would not allow consideration of a household materials (paper, plastic, cans, etc.) "recycling plant" since that also involves significantly different raw materials and processing equipment.

Please understand and be advised that in the course of considering such an application, the Board of Supervisors, if it decides to approve the request, will have the opportunity to establish conditions it deems necessary to ensure that the nonconforming use is as compatible as possible with its surroundings. Based on the observations we made during our site visits, it is my opinion that you might expect the staff to recommend conditions such as a requirement to enclose the existing soil trammel screen as well as the proposed mulch hammer mill in order to lessen the noise impact associated with these machines. Also, it would be reasonable to expect recommended conditions dealing with the allowable hours of operation and dust control, maximum numbers of tractor trailer trips on a daily basis, and some limitation on ultimate business volume, among others.

Thank you for your patience in awaiting this response to your question. Should you and Mr. Wilson wish to pursue a use permit application, you may do so by contacting Mr. Bob Baldwin, Chief Planner, at 890-3404. If you have any questions or wish to discuss the information provided in this letter, please let me know.

Sincerely,



J. Mark Carter
Zoning Administrator/Assistant to the County Administrator

Copy to: Daniel M. Stuck, County Administrator
James E. Barnett, County Attorney
Robert Baldwin, Chief Planner
Al Maddalena, Chief of Development and Compliance